



**Liability Risks for After-Hours Use of Public School Property to Reduce Obesity:
NEW JERSEY**

John Gabriel McGlamery and Tom Baker

This memorandum summarizes New Jersey law governing liability for after-hours recreational use of school facilities. It should be read with this project's overview memorandum, which can be found at www.changelabsolutions.org/publications/liability-schools-50-states. It does not provide the kind of detailed analysis necessary to support the defense of a liability action, nor is it a substitute for consultation with a lawyer. If there are important cases, statutes, or analyses that we have overlooked, please inform us by sending an email to info@changelabsolutions.org.

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For a negligence action in the state of New Jersey, a plaintiff must prove four elements: (1) duty,¹ (2) breach,² (3) causation,³ and (4) injury.⁴ For purposes of evaluating the legal rules that affect the liability risk involved in opening up schools to after-hours recreational use, the crucial issues involve the duties of the school toward entrants, possible breaches of this duty, and defenses available to the school.

Part A of this memorandum addresses the duty of the school system. Part B addresses issues relating to limits on damages. Part C addresses two risk management issues that involve legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district.

A. Public Schools, the Duty Element, and After-Hours Use

Absent special liability protection, school districts and other providers of recreational facilities have the legal duty to take *reasonable* precautions to prevent injury. What is reasonable is very context specific and depends on many things: most important, the nature of the harm, the difficulty of preventing it, and generally accepted standards in the management of recreational facilities.

As any lawyer who has tried to explain the concept of negligence to a layperson knows, the standard of reasonable care can seem frustratingly vague and imprecise. Yet it is the standard that generally governs liability risk for organizations and individuals in the United States. On the whole, it is a flexible standard that balances the competing interests of the providers and users of many kinds of services.

This section explains the ways that New Jersey law limits the legal duty of school districts. New Jersey law sometimes insulates school districts from liability, so that school districts that do not take reasonable precautions may still be able to avoid legal responsibility for any resulting injuries. New Jersey law does this through its grant of

governmental immunity, as provided in the New Jersey Tort Claims Act. In our judgment and compared to most states, New Jersey's governmental immunity is not a reliable shield against liability, but may provide some defense in very particular situations. Subsection 2 discusses the liability and indemnification of school employees, a topic closely related to school districts' overall liability risk.

Subsection 3 discusses recreational user statutes, which appear to offer very little, if any, liability protection to school districts. Subsection 4 discusses the impact of the New Jersey courts' decision to change the three categories of entrants on land from strict rules to guidelines. Subsection 5 concludes this part of the memorandum by comparing the legal duties that a school already faces for activity during the school day with the legal duties that the school would face if it permitted after-hours use of its facilities.

1. Limited Duty Due to Governmental Immunity

In 1972, the New Jersey legislature passed the New Jersey Tort Claims Act (NJTCA).⁵ The statute's legislative declaration recognizes "the inherently unfair and inequitable results which [have occurred] in the strict application of the traditional doctrine of sovereign immunity," but adds, on the other hand, that "government should not have the duty to do everything that might be done."⁶ The resulting statute allows a broad general governmental immunity to public entities, which include municipalities, districts, public agencies, and "any other political subdivision or public body."⁷ This includes schools.⁸

The statute identifies several exceptions to this general governmental immunity.⁹ Three of these exceptions in particular are likely to apply to school districts offering after-hours recreational activities. The first is that schools and other public entities may be liable for injuries that occur because of the dangerous condition of their property.¹⁰ A dangerous condition is defined as "a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used."¹¹ The danger must be inherent to the property, rather than just arising from the plaintiff's use of the property.¹² This should provide schools with immunity from the actions of third parties on public property.¹³ Furthermore, "dangerous condition" has been limited so that the school is not exposed to liability if "(1) the property is safe for its objectively intended use; and (2) the public entity has specifically prohibited by ordinance a known but unintended use; and (3) the public entity has instructed its employees to warn persons against the use."¹⁴ The public entity's duty to address and remedy a dangerous condition is triggered by constructive notice as well as actual notice.¹⁵

The second exception to the general immunity given public entities such as schools concerns the distinction between discretionary and ministerial acts, which is discussed in more detail in the overview memorandum. Discretionary acts are those that involve high-level decision making and planning, like the type conducted by legislative bodies that have to balance budgets and other competing considerations. Ministerial acts are routine decisions that occur during the day-to-day administration of a government entity.¹⁶ In our context, the decision to open a school for an after-hours program would likely be considered discretionary, while maintaining the school facilities would likely be considered a ministerial act. The NJTCA grants immunity for those injuries that result from discretionary acts,¹⁷ but

not for those resulting from ministerial acts.

In *Costa v. Josey*, for example, the New Jersey Supreme Court addressed a question of negligence in resurfacing a highway. As the court questioned whether to allow discretionary immunity, it juxtaposed three cases in an attempt to create a fine line between operational or ministerial actions and high-level discretionary actions. The two discretionary cases were granted immunity because the public entities reached a determination of whether to apply safety measures after determining what safety measures should be applied. In one case, *Fitzgerald v. Palmer*,¹⁸ this meant that the Highway Authority's decision not to erect a fence was discretionary because it balanced a great many safety considerations in the construction of highways.¹⁹ In the other case, *Amelchenko v. Freehold Borough*,²⁰ the court granted immunity to a municipality when the plaintiff fell in an unplowed parking lot because the defendant had balanced high-level policy considerations in determining which streets to plow in what order.²¹ These cases were set off against *Willis v. Department of Conservation & Economic Development*,²² where a little girl lost her arm when she fed sugar to a caged bear. The court determined that once the decision to cage a wild animal was reached, traditional tort principles kicked in and the state was obligated to provide a necessary level of safeguards.²³ When the court applied this narrow spectrum to the facts in *Costa*, it determined that once the decision was made to undertake a resurfacing program, the state was obligated to execute that decision in a nonnegligent manner.²⁴

Finally, there is an exception for “the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct.”²⁵ So, for example, in *Soto v. City of Newark*²⁶ where the city and municipal court were sued for intentional infliction of emotional distress, the court held that the municipal court was not liable since public entities cannot be liable for the intentional actions of their employees.²⁷

2. Duties and Indemnification of Public School Employees

Public employees have immunity for any discretionary actions, as well as immunity from any failure to supervise recreational activities.²⁸ If there is a viable claim against the employee,²⁸ the public entity is responsible by *respondeat superior*.²⁹

New Jersey's statutes begin their treatment of indemnification of state employees with a refreshingly clear statement: “If . . . the Attorney General provides for the defense of an employee or former employee, the State shall provide indemnification for the State employee.”³⁰ If the state does not provide the employee with a defense, the employee can seek indemnification for the cost of the defense, as well as any settlement, appeals, or judgment against him.³¹ To obtain indemnification, the employee must cooperate with the attorney general's defense.³²

One exception to the indemnification of public school employees is that the state is not required to indemnify employees if the attorney general determines that

- a. the act or omission was not within the scope of employment; or
- b. the act or the failure to act was because of actual fraud, willful misconduct or actual malice; or

- c. the defense of the action or proceeding by the Attorney General would create a conflict of interest between the State and the employee or former employee.³³

Also, the state must indemnify employees for defense costs, damages, and the cost of settlement if the court determines that the employee was in fact entitled to representation.³⁴ However, the state is not obligated to pay for “punitive or exemplary damages resulting from the commission of a crime.”³⁵

As a result of these broad indemnity obligations, school districts must be attuned not only to their own liability but also to the liability of their employees.

3. Limited Duty under Recreational User Statute

New Jersey’s recreational user statute, the Landowner’s Liability Act,³⁶ is narrowly construed and does not appear to apply to land in residential or densely populated areas.³⁷ It is therefore highly unlikely to protect schools from liability triggered by after-hour recreational programs run on school property.

Playgrounds are addressed in the statutes separately from other types of recreational land. New Jersey Revised Statutes § 5:3-30 limits the liability that results from offering playgrounds for public, nonprofit use,³⁸ but it is not clear whether this applies to school playgrounds that are open to the public. Common law holds that § 5:3-30 does not attach to municipal playgrounds because the operation of parks is a municipal purpose, rather than a philanthropic one.³⁹ It is our judgment, therefore, that schools will not be able to use the playground laws since the courts may find that schools already have a motivation to create playgrounds and open them to the public.

4. Limited Duty Due to the Historical Distinctions among Entrants on Land

New Jersey uses a hybrid approach to premises liability. It still uses the categories of trespasser, licensee, and invitee to classify entrants and determine the duty the landowner owes to them,⁴⁰ but the state has changed these categories from strict rules to guidelines that take other factors into consideration as well.⁴¹ These factors include

- (1) the relationship of the parties,
- (2) the nature of the attendant risk,
- (3) the opportunity and ability to exercise care, and
- (4) the public interest in the proposed solution.⁴²

An invitee is an individual who “is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.”⁴³ In addition, anytime an individual enters the landowner’s property to confer an economic benefit to the landowner, that person is an invitee.⁴⁴ The landowner is required to exercise ordinary care in making the land reasonably safe for the invitee for the purposes of the invitation.⁴⁵ In our context, a school would have to consider the types of recreation the invitees are expected to participate in and the hazards that may entail. Landowners have to conduct reasonable inspections to discover defective conditions in order to make the premises reasonably safe.⁴⁶ This means they must give the invitee adequate warning about dangerous conditions.⁴⁷

These duties cannot be delegated,⁴⁸ and they extend to injuries that occur on all parts of the property where the invitee is reasonably expected to go.⁴⁹

A licensee is a middle-ground class where the individual is expressly or implicitly allowed on the landowner's property for the individual's benefit, for example, a door-to-door salesperson. Since the landowner does not derive a benefit from the licensee, his status does not rise to the level of an invitee.⁵⁰ Landowners have a duty to licensees to either warn them or to remove or repair dangerous conditions on the property that the landowner does not know of.⁵¹ Unlike the duty owed to invitees, landowners do not owe licensees a duty to inspect their property for dangerous conditions.⁵² If the condition is obvious or easily observable and the licensee fails to exercise due care, the landowner may be relieved of her responsibility.⁵³

While the absence of bright-line rules makes it harder to determine into which category an entrant to an after-school recreational program might fall, New Jersey is fact specific and similar to most states. If the entrant has paid for admission, such as a fan at a sporting event or a student participating in an after-school program, then he may be considered an invitee. An entrant may also have invitee status if the school publicizes an event, such as a free after-school program. If the school simply opens its grounds, playgrounds, or sports fields to the public without any publicized program, then an entrant may still qualify as an invitee or may instead fall under the category of licensee. Finally, if the school locks its gates after the school day ends, then an entrant would likely qualify as a trespasser, to whom the landowner owes no duty to keep her land safe.

5. Duty during the School Day and After: A Comparison

When deciding whether to open up school facilities for recreational use, it is useful to evaluate how the legal risk arising out of opening the school grounds for recreational use compares to the legal risk arising out of the use of school grounds for programs that the school already runs.

School district liability is likely lower after school hours than during the school day, for two reasons. First, the Tort Claims Act provides schools running school-day and after-school programs with the same level of governmental immunity (see section A1 above). Second, New Jersey Revised Statutes §§ 59:27 and 59:3-11 relieve schools from their duty to supervise students when they participate in after-school recreational programs.⁵⁴ However, if the school decides to provide supervision and that supervision is negligent, the school is liable.⁵⁵

B. Limits on Damages

1. Damages Limits under State Tort Claims Act

Research did not reveal any limits on damages under the New Jersey Tort Claims Act.

2. General Damages Limits for Tort Claims

New Jersey has statutes requiring a bifurcated trial for punitive damages,⁵⁶ creating a high standard of evidence for

punitive damages,⁵⁷ capping punitive damages,⁵⁸ and limiting contingency fees.⁵⁹ Also, the collateral source rule has been modified so that collateral source payments paid by health insurers or other “collateral sources” of funds are deducted from the plaintiff’s damages.⁶⁰

C. Selected Risk Management Issues

In this section we consider two risk management issues that involve legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district. In brief, we conclude that New Jersey courts may enforce some liability waivers, and while most third parties have no advantages when it comes to reducing liability, nonprofit corporations formed for exclusively charitable reasons have statutory immunity from liability.

1. Liability Waivers

Indemnity agreements or pre-tort waivers of liability are valid when they are between adults and not contrary to public policy. The agreements cannot relieve the defendant of any public duty entailing the exercise of care or be made between parties of unequal bargaining power.⁶¹

It is settled law in New Jersey that parents cannot sign waivers, or otherwise dispose of a child’s cause of action, without statutory authority or judicial approval.⁶² Any waiver that attempted to shift liability from the school to children who wanted to use the property during an after-hours recreational program would be rendered void.

2. Providing Access through Third Parties

Schools have few advantages over most third parties in terms of liability protection. Although New Jersey’s Tort Claims Act applies to public entities such as schools, the act does not offer much protection when it comes to the actual administration of an after-school program. The recreational user statute provides no significant advantage to either schools or third parties. However, nonprofit corporations that are organized for exclusively charitable or educational reasons are immune from tort liability.⁶³ This could be an enormous boon to private organizations formed with the intention of providing recreational programs to children.

The liability risk of schools or third parties running or sponsoring after-hours recreational programs is an important question that will be addressed in future research on joint venture agreements for public schools.

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¹ This is a question of law and is not determined by the jury. *Strachan v. John F. Kennedy Mem'l Hosp.*, 538 A.2d 346, 349 (N.J. 1988).

² *Id.* at 351.

³ Here the jury must determine whether (1) the defendant had exclusive control of the instrumentality that caused the occurrence, (2) the circumstances were such that in the ordinary course of events the incident would not have occurred if the defendant had exercised reasonable care, and (3) plaintiff's voluntary act or negligence did not contribute to the occurrence. N.J. MODEL CIV. CHARGES 5.10D (2012). *See Stec v. Richardson*, 381 A.2d 789, 791-92 (N.J. 1978) (these were the main issues on appeal in the case where a passenger of a taxi was injured after the taxi's wheel flew off resulting in an accident).

⁴ *Endre v. Arnold*, 692 A.2d 97, 100 (N.J. Super. Ct. App. Div. 1997) (setting out the elements of a cause of action in negligence in a case involving the plaintiff's fall from a flight of stairs).

⁵ N.J. REV. STAT. § 59:1-1 et seq. (2013).

⁶ *Id.* § 59:1-2

⁷ *Id.* § 59:1-3.

⁸ *See, e.g., Newsham v. Cumberland Reg'l High Sch.*, 797 A.2d 878 (N.J. Super. Ct. App. Div. 2002) (applying the Tort Claims Act to a suit against the school district and board for an injury that occurred during a cheerleading stunt).

⁹ 1-5 *LEXISNEXIS PRACTICE GUIDE NJ PERSONAL INJURY* § 5.04 (2007) [hereinafter *PRAC. GUIDE*]. The statute is a general rule that governs both public entities and their employees. N.J. REV. STAT. § 59:2-1(b). Its intent is "to insure that any immunity provisions provided in the act or by common law will prevail over the liability provisions." *Bligen v. Jersey City Hous. Auth.*, 619 A.2d 575, 577 (N.J. 1993). *See also PRAC. GUIDE, supra*.

¹⁰ N.J. REV. STAT. § 59:4-2 (2013).

¹¹ *Id.* § 59:4-1(a).

¹² *King by King v. Brown*, 534 A.2d 413, 413 (N.J. Super. Ct. App. Div. 1987) (while leaving a public stadium, plaintiff was injured by an errantly thrown football, tossed by a group of "rompish boys playing touch football"; act not seen as a dangerous condition of the property).

¹³ *See Rodriguez v. N.J. Sports & Exposition Auth.*, 472 A.2d 146 (N.J. Super. Ct. App. Div. 1983) (attack by persons in sports complex not a dangerous condition); *Cogsville v. Trenton*, 386 A.2d 1362 (N.J. Super. Ct. App. Div. 1978) (dog bites from a "dangerous" dog owned by tenant in city dwelling not a dangerous condition); *Setrin v. Glassboro State Coll.*, 346 A.2d 102 (N.J. Super. Ct. App. Div. 1975) (attack on campus of state college not a dangerous condition).

¹⁴ *Burroughs v. City of Atlantic City*, 560 A.2d 725, 731-32 (N.J. Super. Ct. App. Div. 1989).

¹⁵ 35A N.J. *PRAC. SERIES* § 27.14 (2008).

¹⁶ *Costa v. Josey*, 415 A.2d 337 (N.J. 1980); 1-5 *PRAC. GUIDE, supra* note 9, at § 5.36(1).

¹⁷ N.J. REV. STAT. § 59:2-3(a) (2007); *id.* § 59:3-2(a).

¹⁸ *Fitzgerald v. Palmer*, 219 A.2d 512 (N.J. 1966).

¹⁹ *Id.* at 514.

²⁰ 201 A.2d 726 (N.J. 1964).

²¹ *Id.* at 730-31.

²² 264 A.2d 34 (N.J. 1970).

²³ *Id.*

²⁴ *Costa v. Josey*, 415 A.2d 337, 342 (N.J. 1980).

²⁵ N.J. REV. STAT. § 59:2-10 (2013).

²⁶ 72 F. Supp. 2d 489 (D.N.J. 1999).

²⁷ *Id.* at 497.

²⁸ 35A N.J. *PRAC. SERIES* § 27.13 (2013).

²⁹ *Id.*

³⁰ N.J. REV. STAT. § 59:10-1 (2013).

³¹ *Id.* § 59:10-2. This also applies to local public entities like schools. *Id.* § 59:10-4.

³² *Id.* § 59:10-3.

³³ *Id.* § 59:10A-2.

³⁴ *Id.* § 59:10-2.

³⁵ *Id.* § 59:10-2.

³⁶ *Id.* § 2A:42A-2 et seq.

³⁷ *See Harrison v. Middlesex Water Co.*, 403 A.2d 910, 914-915 (N.J. 1979) (pointing out that the act historically applied to rural lands such as agricultural land or woodland).

³⁸ N.J. REV. STAT. § 5:3-30 (2013).

- ³⁹ *Primo v. Bridgeton*, 392 A.2d 1252 (N.J. Super. Ct. Law Div. 1978) (municipality was not immune from parents' lawsuit, which was commenced after their child was injured on a slide in a public playground, because the operation of the park was a municipal purpose and not a philanthropic purpose), *questioned by* *Weber v. United States*, 991 F. Supp. 694 (D.N.J. 1998).
- ⁴⁰ *Sussman v. Mermer*, 862 A.2d 572, 574 (N.J. Super Ct. App. Div. 1997).
- ⁴¹ *Id.* at 574-75 (citations omitted); 1-2 PRAC. GUIDE, *supra* note 9, at § 2.02 et seq.
- ⁴² *Hopkins v. Fox & Lazo Realtors*, 625 A.2d 1110, 1116 (N.J. 1993).
- ⁴³ RESTATEMENT (SECOND) OF TORTS § 332 (2012); 1-2 PRAC. GUIDE, *supra* note 9, at § 2.08(4).
- ⁴⁴ *Daggett v. DiTriani*, 476 A.2d 809 (N.J. Super. Ct. App. Div. 1984) (stating that when plaintiff's sole purpose for visiting landowner's home was to buy tickets for show, plaintiff's acceptance of invitation for refreshment did not alter her status as invitee); 1-2 PRAC. GUIDE, *supra* note 9, at § 2.08(1).
- ⁴⁵ *Hopkins*, 625 A.2d 1110; RESTATEMENT (SECOND) OF TORTS § 343; 1-2 PRAC. GUIDE, *supra* note 9, at § 2.08(4).
- ⁴⁶ *Handleman v. Cox*, 187 A.2d 708 (N.J. 1963) (question of fact as to whether defendant's leaving crate in front of stairs constituted negligence).
- ⁴⁷ *Sanna v. Nat'l Sponge Co.*, 506 A.2d 1258, 1261-62 (N.J. Super. Ct. App. Div. 1986).
- ⁴⁸ *Kane v. Hartz Mountain Indus., Inc.*, 650 A.2d 808 (N.J. Super. Ct. App. Div. 1994).
- ⁴⁹ *Nary v. Parking Auth. of Town of Dover*, 156 A.2d 42, 45 (N.J. Super. Ct. App. Div. 1960).
- ⁵⁰ *Parks v. Rogers*, 825 A.2d 1128 (N.J. 2003); RESTATEMENT (SECOND) OF TORTS § 330; 1-2 PRAC. GUIDE, *supra* note 9, at § 2.18.
- ⁵¹ *Parks*, 825 A.2d 1128; *Tighe v. Peterson*, 812 A.2d 423 (N.J. Super. Ct. App. Div. 2002); 1-2 PRAC. GUIDE, *supra* note 9, at §§ 2.20, 2.23. The general requirements to clear any hazards usually apply to dilapidated sidewalks and parking lots or getting rid of ice and snow. *See* 1-2 PRAC. GUIDE, *supra* note 9, at § 2.24.
- ⁵² *Parks*, 825 A.2d 1128; *Handleman v. Cox*, 187 A.2d 708, 712 (N.J. 1963). However, the landowner must ensure that the entrant's risk is not greater than his own. *Id.*; 1-2 PRAC. GUIDE, *supra* note 9, at § 2.22.
- ⁵³ *Parks*, 825 A.2d 1128; 1-2 PRAC. GUIDE, *supra* note 9, at § 2.20. There is a fact-sensitive analysis to determine whether the landlord fulfilled his duty to warn the licensee. *See Bagnana v. Wolfinger*, 895 A.2d 1180 (N.J. Super. Ct. App. Div. 2006) (directing jury to consider multiple circumstances surrounding plaintiff's accident on defendants' trampoline); 1-2 PRAC. GUIDE, *supra* note 9, at § 2.20.
- ⁵⁴ *Law v. Newark Bd. of Educ.*, 417 A.2d 560, 563 (N.J. Super. Ct. App. Div. 1980).
- ⁵⁵ "Nothing in this section exonerates a public employee for negligence in the supervision of a public recreational facility." N.J. REV. STAT. § 59:3-11 (2007); *Law*, 417 A.2d at 564 (school found liable for negligent supervision at a school-board-sponsored recreational program; immunity did not apply because the board provided supervision).
- ⁵⁶ N.J. REV. STAT. § 2A:15-5.13.
- ⁵⁷ A plaintiff must show by clear and convincing evidence that the defendant acted with actual malice or a wanton and willful disregard; no proof of negligence, including gross negligence, will satisfy this burden of proof. N.J. REV. STAT. § 2A:15-5.12.
- ⁵⁸ Punitive damages are limited to the greater of \$350,000 or five times defendant's liability. A judge may reduce or eliminate damages if it is unreasonable. N.J. REV. STAT. § 2A:15-5.14.
- ⁵⁹ Contingency fees shall not exceed: (1) 33 1/3% on the first \$500,000 recovered; (2) 30% on the next \$500,000 recovered; (3) 25% on the next \$500,000 recovered; (4) 20% on the next \$500,000 recovered; or 25% of any amount where the client is a minor or mentally incapacitated. N.J.R. GEN. APPLICATION R. 1:21-7 (2012)
- ⁶⁰ N.J. REV. STAT. § 2A:15-97 (2013).
- ⁶¹ *Mayfair Fabrics v. Henley*, 226 A.2d 602, 605 (N.J. 1967) (examples of defendants bearing such a public duty include "common carriers, public utilities, and the like"); *Kuzmiak v. Brookchester*, 111 A.2d 425 (N.J. Super. Ct. App. Div. 1955) (unequal bargaining power between lessor and lessees, who were residential tenants in an apartment building).
- ⁶² *Hojnowski ex rel. Hojnowski v. Vans Skate Park*, 868 A.2d 1087, 1096 (N.J. Super. Ct. App. Div. 2005) ("It has long been the law of New Jersey that without statutory authority or judicial authorization, a parent has no ability to release a claim properly belonging to a child."); *Moscatello ex rel. Moscatello v. Univ. of Med. & Dentistry of N.J.*, 776 A.2d 874, 879 (N.J. Super. Ct. App. Div. 2001).
- ⁶³ N.J. REV. STAT. § 2A:53A-7 (2013); *O'Connell v. New Jersey*, 795 A.2d 857 (N.J. 2002) (holding that university is immune from liability for injuries to student who fell on broken staircase); 1-2 PRAC. GUIDE, *supra* note 9, at § 2.12. This immunity does not apply to individuals who are unconcerned with and outside the corporation. *Bieker v. Moorestown Community House*, 777 A.2d 37 (N.J. 2001) (explaining that charitable immunity does not apply where property is rented for noncharitable activities by for-profit entities).